

REMARKS

Claims 1, 3 and 5-23 are pending in the application.

Claims 1, 3 and 5-23 stand rejected.

Claims 8, 13 and 15-16 have been amended.

Amendments to Drawings

Applicant thanks the Examiner for the Examiner's diligent review of the drawings.

Applicant has provided clean drawings for Figs. 2, 3 and 4, per the Examiner's request.

Applicant has taken this opportunity to remove unnecessary graphics and text from these drawings. No new matter is added hereby.

It is stated in the Office Action that the configurable communication link, the processing devices coupled to the communication link, and the software programs coupled to the processing devices are not shown in the drawings. Applicant respectfully disagrees.

Applicant respectfully submits that these elements, or more correctly, examples of these elements, are indeed depicted in the drawings. Examples of a configurable communication link include virtual private network 409, connections over the internet (Fig. 4, or internet 307) and a corporate intranet (Fig. 4). Examples of a processing device coupled to the communication link include browser/client 301, the various servers within application server 311, the various processing devices depicted in Fig. 4 and the devices that are represented by middleware tier 209 and application logic tier 211, among other processing devices shown and discussed in the application. As can be seen, these processing devices are variously coupled to the examples of communications links just described. As to the software programs, Applicant respectfully notes

that examples of such software programs include apps 321 (Fig. 3), which can be seen to be coupled to storage service 335 of application server 311, one of the examples of processing devices presented above. Such an application server would typically be executed on a processing device such as a thin client (e.g., thin client with browser 415), or computers accessing a corporate intranet via DSL/ISDN or dial-up (as depicted in Fig. 4).

Moreover, Applicant respectfully notes that such is made clear at a variety of points within the present application. For example, at p. 19, lines 6-13, it is stated that:

Fig. 4 is a schematic block diagram of D2D system 400 for providing various services to client network 401 in a secure and distributed environment. A VPN (virtual private network) client 403 within client network 401 may request zap!Safe™ storage 407 from a VPN server 405 (of system 400). Storage 407 offers persistent storage capabilities within a VPN 409 that are accessible from all testing and deployment configurations. In one embodiment, storage 407 offers a single site to store all mission critical data and applications for an extended period of time, and features full back-up, disaster recovery and encryption facilities.

Thus, as can be seen, a client (processing device) is able to request application functionality (storage management) via a configurable communications link (virtual private network). Applicant therefore respectfully asserts that the claim elements noted in the rejection find support in the specification, and that the requirements of 37 CFR 1.83(a) are thus met by the drawings.

Rejection of Claims under 35 U.S.C. § 112

Claims 8-12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended claim 8 to address the Examiner's concerns, and respectfully assert that the rejection of claims 8-12 is overcome thereby.

Rejection of Claims under 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. § 102(e) as being anticipated by McNally, et al., U.S. Patent No. 6,259,448 (McNally). Applicant respectfully traverses this rejection.

As an initial matter, Applicant does not concede that the reference is prior art, and so respectfully notes that amendments made herein are without prejudice to Applicant's right to establish, for example in this or a continuing application, that the reference is not prior art to an invention now or hereafter claimed.

Applicant respectfully submits that claim 1 is allowable over McNally. Claim 1 recites:

allocating the processing resources by

displaying a list of processing resources on the display device, wherein the processing resources comprise at least one of a hardware processor and a software program;

accepting signals from the user input device to indicate the configuration of a selected processing resource of the processing resources; and
configuring the selected processing resource.

As an initial matter, Applicant notes that McNally is concerned with the configuration and deployment of resource models in a distributed computer network. These resource models do not describe the manner in which processing resources should be allocated, but merely provide an abstraction of a resource in a distributed network that abstract the resource into a model to facilitate the administration of such resources. By contrast, the claimed invention is directed to the allocation of processing resources.

Thus, McNally is concerned with the configuration and deployment of resource models, and not with the allocation of specific processing resources. In fact, the use of McNally's resource models implies this ("Managing resource models (as opposed to specific resources) provides significant advantages."; col. 1, lines 51-52) Thus, unlike McNally, which deals only with the configuration and deployment of resource models, the claimed invention acts on the processing resources being allocated.

Moreover, with regard to claim 1, and specifically, with regard to the claimed allocation of the processing resources, Applicant respectfully asserts that the rejection thereof fails to provide any information whatsoever that effectively indicates what portion of McNally makes obvious the claimed invention, as recited thereby. In fact, Applicant has carefully studied McNally and can find no reference to comparable elements existing therein. Applicant respectfully requests that the Examiner more specifically point out the portion or portions of McNally upon which the Examiner believes these elements read. *See*, MPEP §§706, 707; 37 C.F.R. 1.106(b). However, Applicant has responded to the cited reference in what Applicant believes to be as meaningful a manner as possible.

This failure of McNally is brought into relief by the following claim limitations:

accepting signals from the user input device to indicate the configuration of a
selected processing resource of the processing resources; and
configuring the selected processing resource.

Applicant respectfully submits that the sections of McNally cited as anticipating these limitations fail to do so. As with other cited sections of McNally, the cited sections discuss the deployment and configuration of resource models, and do not show, teach or disclose the indication of the configuration of, or the configuration of a selected processing resource. As can be seen, it is not a resource model that is being configured, it is a (selected) processing resource. And while composite resource models can be built from primitive resource models (col. 9, lines 13-26), Applicant is unable to find a showing, teaching or disclosure of the indication of the configuration of, or the configuration of a (selected) processing resource in the cited portions of McNally.

Applicant respectfully posits that this is the case because the configuration of a processing resource, as in the claimed invention, would be antithetical to the approach taken by McNally, which instead relies on resource models to configure a given resource. Applicant therefore respectfully asserts that McNally fails to anticipate claim 1, for at least the foregoing reasons.

Rejection of Claims under 35 U.S.C. § 103

Claims 3 and 5-23 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of McNally, et al., U.S. Patent No. 6,259,448 (McNally). Applicant respectfully traverses this rejection.

As an initial matter, Applicant requests clarification of the rejections of claims 3, 5, 8, 13, 15 and 16 under 35 U.S.C. § 103(a), in light of McNally. The Court of Appeals for the Federal Circuit has set forth requirements for rejections based on 35 U.S.C. § 103, which Applicants respectfully submit have not been met in at least the rejection of independent claims 3, 5, 8, 13, 15 and 16. “To reject claims in an application under section 103, an examiner must show an un rebutted *prima facie* case of obviousness. In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent.” *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir 1998) (citations omitted).

Mere speculation or unfounded assumption is not sufficient to support a *prima facie* case of obviousness. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967); *In re Sporck*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

“To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references... [S]implicity and hindsight are not the proper criteria for resolving the issue of obviousness.” *Ex Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Int’f 1985).

While it is expected that one skilled in the art, after reviewing the disclosure of the present application, would be capable of designing a system of the claimed invention, there is nothing in the statutes or the case law which makes that which is within the capabilities of one skilled in the art synonymous with obviousness. *See Ex parte Gerlach and Woerner*, 212 U.S.P.Q. 471. Furthermore, the Board has held that examiners have misstated the law by “equating that which is within the capabilities of the skilled designer with obviousness.” *In re Sung Nam Cho*, 813 F.2d 378. Applicant respectfully asserts that the Office Action equates skill in the art with obviousness, and that irrespective of other of McNally’s failings, the disclosure of McNally is insufficient to make obvious the claimed invention, and such insufficiency is not remedied by the addition of skill in the art.

With respect to claims 3, 5, 8, 13, 15 and 16, Applicant respectfully requests that the Examiner provide greater detail as to the bases for these rejections or an affidavit as to the personal knowledge relied on within the meaning of 37 C.F.R. § 1.104(d)(2), which states:

“(2) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.”

Alternatively, Applicant respectfully requests that a reference or particular parts of the cited references be designated, and the pertinence of each reference in support of the rejection as required by 37 C.F.R. 1.104(c)(2), which provides: "(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

With regard to claims 3, 5 and 7, Applicant respectfully submits that McNally fails to show, teach or suggest the claimed invention recited thereby. For the reasons expressed in the section regarding 35 U.S.C. § 102, McNally does not contain all the limitations of independent claim 1. As noted therein, McNally discloses resource models of various stripes, but fails to reach the concepts involved in the allocation of processing resources by the indication of configuration or the configuration of a selected processing resource, as recited in claim 1. As noted, the configuration of a specific resource is, in fact, antithetical to McNally, which is focused on simplifying the administration of resources through the use of standardized resource models.

For at least this reason, McNally, even in light of skill in the art (which Applicant maintains is neither appropriate nor properly defined in the Office Action), fails to make obvious the claimed invention, as claimed in independent claim 1. Moreover, Applicant respectfully asserts that claims 3, 5 and 7, which depend from claim 1, are also allowable, for at least the foregoing reasons.

Moreover, claim 3 recites the indication of first and second processors for configuration, and the coupling of those processors via a digital network. Applicant agrees that the allocation

of processors is not shown, taught or suggested by McNally, which Applicant assumes is the intended meaning of the rejection. Applicant respectfully submits that McNally also fails to provide any guidance as to allocating such resources in such a manner, and that one of skill in the art would not be so motivated.

The cited portion of McNally states that “Alternatively, composite models can be developed to support individual operators, so that particular resources are managed by particular administrators.” This merely states that composite resource models can be fashioned such that a given resource is managed by a given administrator. Applicant fails to understand how this teaches the allocation of resources, or how the selection of resources can be equated to the allocation of those resources, notwithstanding the fact that no such specificity is shown, taught or suggested by McNally. In fact, Applicant is unable to find any sort of “selection” operation shown, taught or suggested in the cited portions of McNally. Moreover, even if McNally disclosed such an operation, selecting a resource is not comparable to allocating the resource by configuring that resource. Applicant therefore respectfully submits that claim 3 is not made obvious by McNally, even in light of skill in the art, were such a rejection even appropriate.

Claims 5 and 7 are similarly rejected, and Applicant respectfully submits that the rejection of claims 5 and 7 is similarly infirm.

With regard to claim 8, Applicant respectfully submits that the recited configurable communication link and the database links described in McNally are in no way analogous to one another. The claimed configurable communication link allows one or more of the processing devices coupled thereto to communicate with one another, and is an element of the claimed processing environment. The cited portion of McNally states that:

“When each distribution icon is created, preferably "links" to the various machines are established and maintained in the node database 50.”

These database links are conceptual constructs that relate, in this case, the resource model distributed with the machines to which the resource model is to be distributed. Moreover, the act of communicating the task to be distributed to its intended machine(s) is very different from a configurable communication link that allows one or more of the processing devices coupled thereto to communicate with one another, and which is an element of the claimed processing environment. For at least this reason, McNally, even in light of skill in the art (which Applicant maintains is neither appropriate nor properly defined in the Office Action), fails to make obvious the claimed invention, as claimed in independent claim 8. Moreover, Applicant respectfully asserts that claims 9-12, which depend from claim 8, are also allowable, for at least the foregoing reasons.

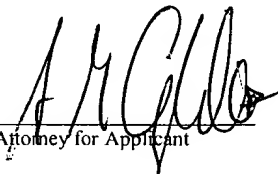
With regard to claims 13-14 and 18-23, Applicant respectfully submits that McNally fails to show, teach or suggest the claimed invention recited thereby. For the reasons expressed in the section regarding 35 U.S.C. § 102, McNally does not contain all the limitations of independent claim 13, which has been amended to include the limitation of claim 1 with regard to the allocation of a processing resource. As noted earlier herein, McNally discloses resource models of various stripes, but fails to reach the concepts involved in the allocation of processing resources by the indication of configuration or the configuration of a selected processing resource, as now recited in claim 13. As noted, the configuration of a specific resource is, in fact, antithetical to McNally, which is focused on simplifying the administration of resources through the use of standardized resource models.

For at least this reason, McNally, even in light of skill in the art (which Applicant maintains is neither appropriate nor properly defined in the Office Action), fails to make obvious the claimed invention, as claimed in independent claim 13. Moreover, Applicant respectfully asserts that claims 14 and 18-23, which depend from claim 13, are also allowable, for at least the foregoing reasons. Applicant also respectfully asserts that claims 15 and 16, having been amended in comparable fashion to claim 13, are also allowable, for at least the foregoing reasons. Moreover, Applicant respectfully asserts that claim 17, which depends from claim 16, is also allowable, for at least the foregoing reasons.

CONCLUSION

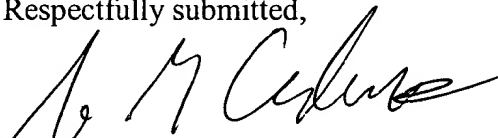
In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **November 10, 2004**.

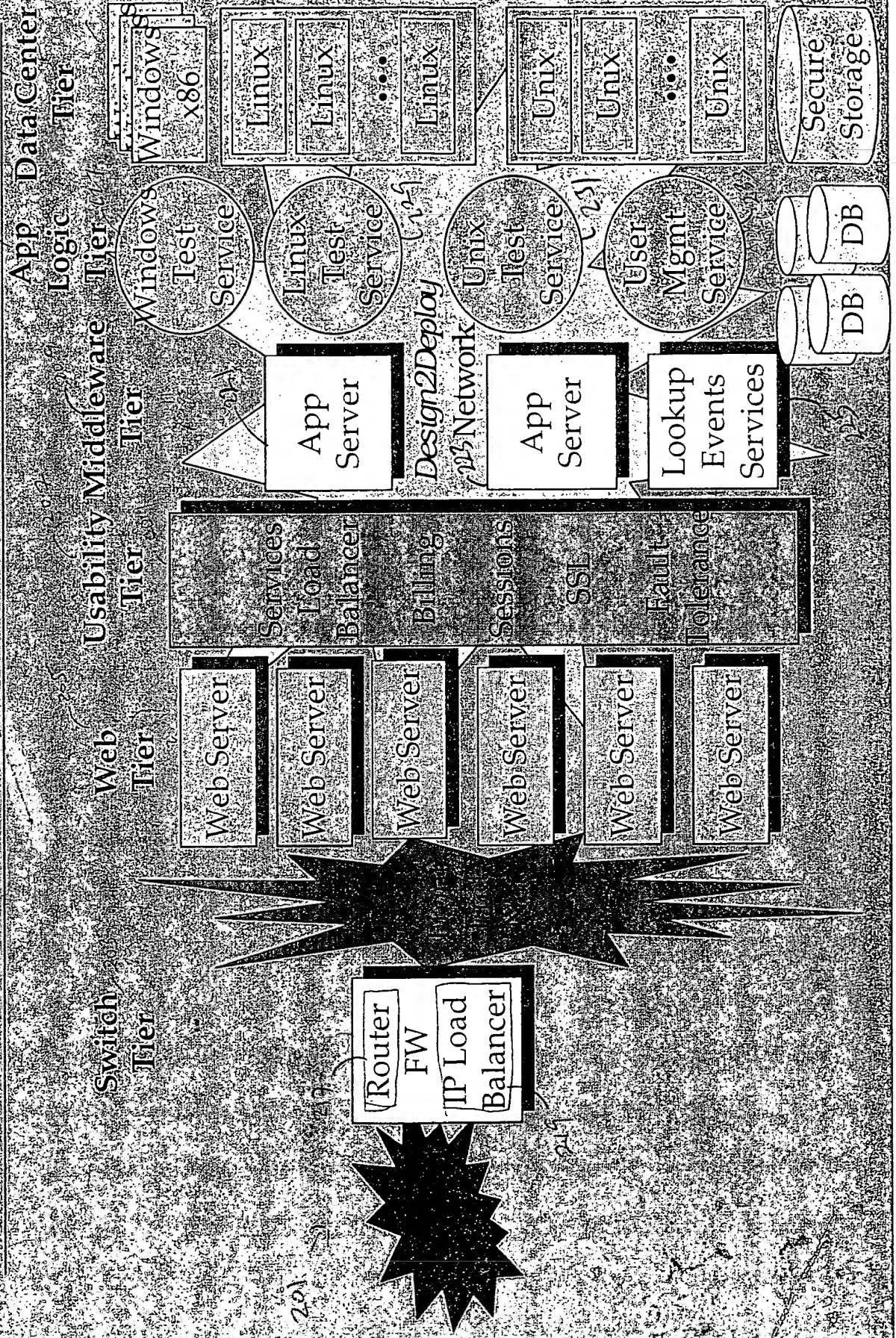
 11/10/04

Attorney for Applicant Date of Signature

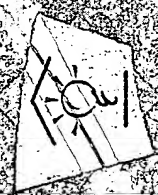
Respectfully submitted,


Samuel G. Campbell, III
Attorney for Applicant
Reg. No. 42,381
Telephone: (512) 439-5084
Facsimile: (512) 439-5099

Design2Deploy n-tier Architecture

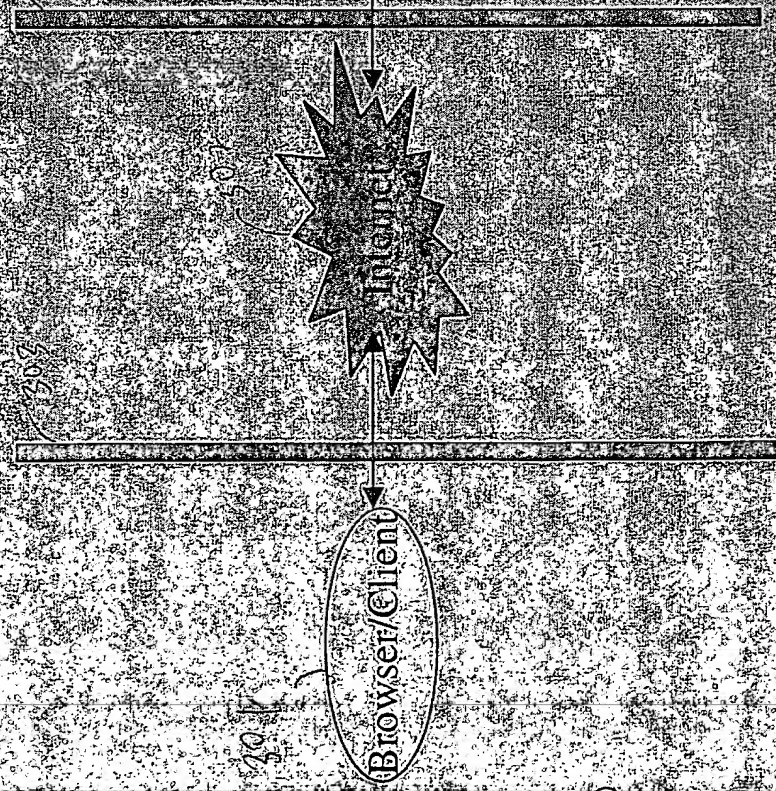


Design2Deploy Service Layers



Firewall

Firewall



Application Server

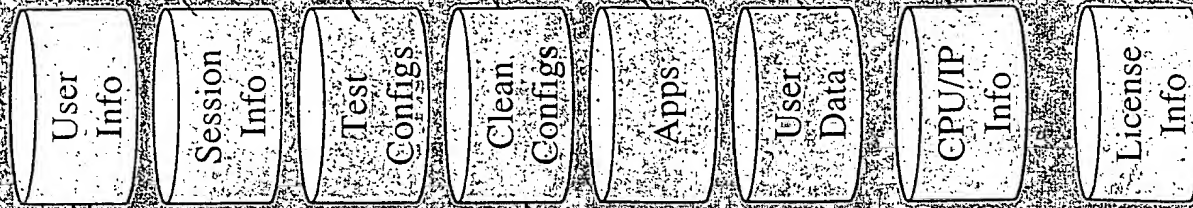
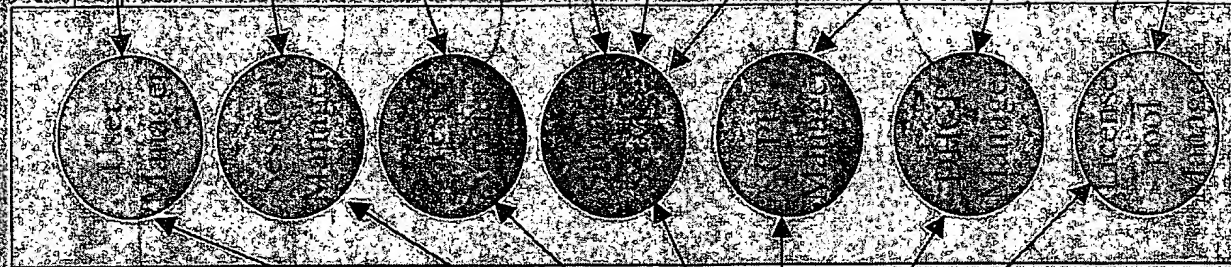


FIG. 3

Design2Deploy Security

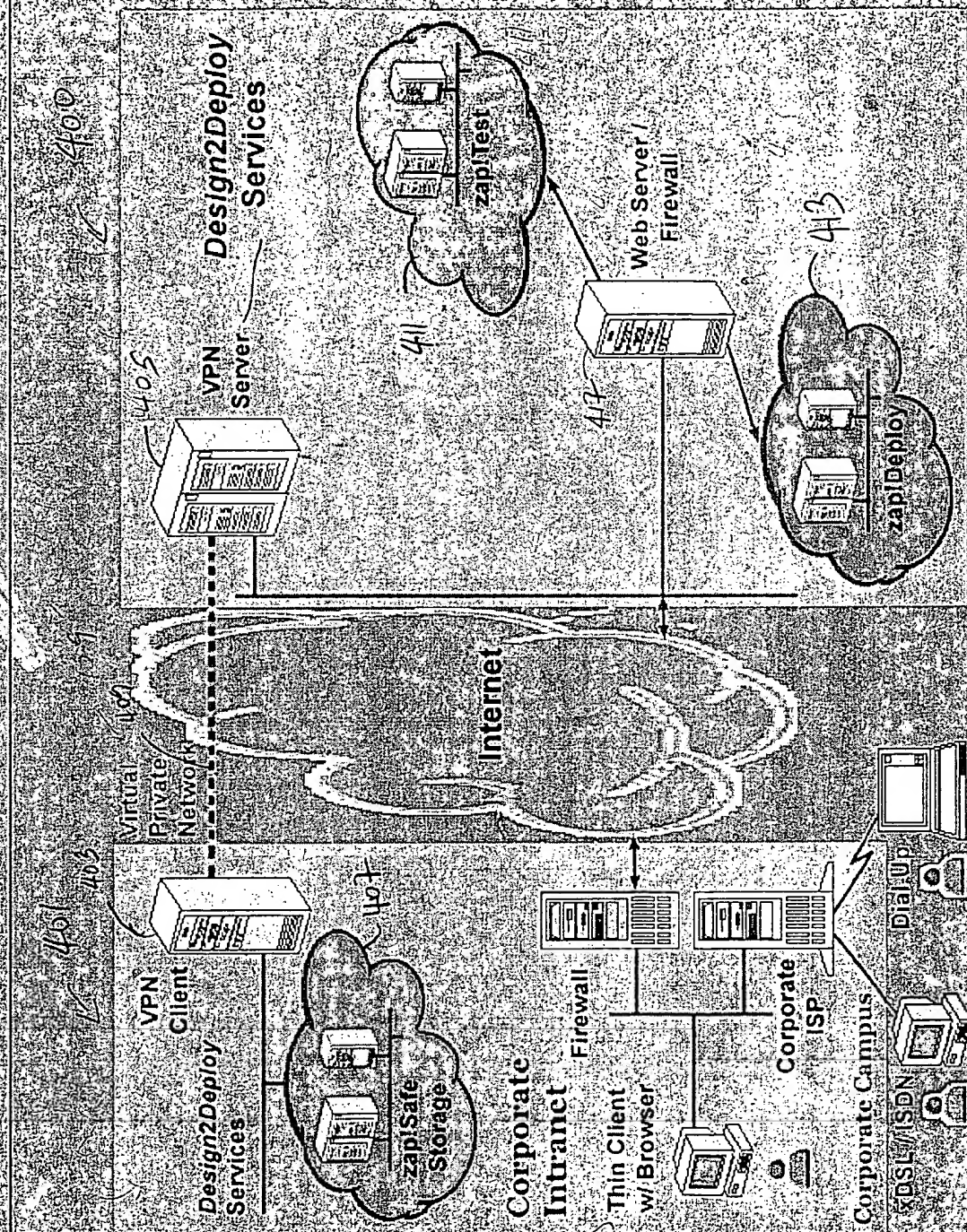


FIG. 4